IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

1. Megh Singh & Others Vs. State of Rajasthan
(D.B. Criminal Appeal No.1066/2001)

2. Lakkhi Vs. State of Rajasthan
(D.B. Criminal Appeal No.1061/2001)

D. B. Criminal Appeals under Sec.374 (2) Cr.P.C. against the judgment dated 13-12-2001 in Sessions Case No.10/2001 passed by Sh. K.C. Jat, RHJS, Additional Sessions Judge (Fast Track) Gangapur City.

Date of Judgment: September 12, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. Biri Singh Sinsinwar] for the appellants.
Mr. Kamlendra Sihag]

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Kadi (Pw.9), who earlier married to Ratan (appellant) as per the customs prevailing in Gurjar community, subsequently contracted bigamous marriage (Nata marriage) with Ghoodiya (Pw.2), who kept her in his house as his wife without making payment of `Jhagda' (Money required to be paid to first husband by second husband in lieu of Nata marriage). Since ceremonies necessary for Nata marriage were not performed and Ghoodiya and Kadi started residing as husband and wife, the first husband called meeting of Caste Panchayat, that too could not resolve the matter. Thereafter first husband along with other persons took law in their own

hands. On the fateful night they entered the house of second husband and opened fire in making attempt to take away Kadi with them. Kannu, brother of second husband, received fire arm injuries and died on the spot. The appellants, eight in number, were indicted before learned Additional Sessions Judge (Fast Track) Gangapur City, who vide judgment dated December 13, 2001, convicted and sentenced the appellants as under:-

Appellants Megh Singh, Raman Singh, Ratan, Rekh Raj @ Lekh Raj, Hari Singh, Kirodi, Roop Singh and Lakkhi:

U/s.148 IPC:
Each to suffer rigorous imprisonment for one year.

U/s.302/149 IPC:
Each to suffer imprisonment for life and fine of Rs.1000/-, in default to further suffer simple imprisonment for two months.

U/s.307/149 IPC:
Each to suffer rigorous imprisonment for five years and fine of Rs.500/-, in default to further suffer simple imprisonment for one month.

U/s.460 IPC:
Each to suffer rigorous imprisonment for five years and fine of Rs.500/-, in default to further suffer simple imprisonment for one month.

U/s.324/149 IPC:
Each to suffer rigorous imprisonment for one year.

U/s.323/149 IPC:
Each to suffer rigorous imprisonment for two months.

The substantive sentences were ordered to run concurrently.

2. The prosecution story is woven like this:-

On October 11, 1996 informant Moti Lal (Pw.5) handed over a written report (Ex.P-7) at Police Station Bamanwas to the effect that in the

preceding night around 2 AM 8-10 assailants armed with lathal weapons came to the house of Kannu (since deceased) in a jeep and opened fire that hit on the head of Kannu. The assailants gave beating to Ghoodiya (brother of Kannu) and Guddi (daughter of Kannu). The assailants got enraged because daughter of Chhotya Gurjar entered into Nata Marriage with Ghoodiya. Two assailants viz. Megh Singh Gurjar and Lekh Raj Gurjar were caught at the time of incident. On that report a case under sections 147, 148, 149, 458, 459, 307, 324, 323, 363 IPC and 3/25 Arms Act was registered and investigation commenced. During the course of investigation Kannu succumbed to his injuries and section 302 IPC was added. Autopsy on the dead body was performed, necessary memos were drawn, statements of witnesses were recorded, appellants were arrested and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) Gangapur City. Charges under sections 148, 120B, 363, 302/149, 307/149, 324/149, 323/149 and 460 IPC were framed against the appellants, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 25 witnesses. In the explanation under Sec.313 CrPC, the appellants claimed innocence. One witness in support of defence was examined. During the course of trial accused Badrya died and proceedings against him were dropped on February 22, 2001. On hearing final submissions learned trial Judge convicted and sentenced the appellants as indicated above.

3. Death of Kannu Ram @ Kannu Mal was undeniably homicidal in nature. As per post mortem report (Ex.P-15) following ante mortem injuries were found on the dead body:-

1. Lacerated punctured wound 3 x 3cm x bone deep with

clotted blood present on temporal region. Margins of the wound are irregular and ill defined with no blackening or tattooing around the wound.
2. Multiple lacerated punctured wound varying in size ½ x ¼ cm x ?deep present on Rt. fronto parieto temporal region of scalp Rt. side forehead. Rt. side face including bridge of nose and Rt. eye face including bridge of nose and Rt. eye ball with upper eyelid. Rt. ear pinna and Rt. lateral side of neck with clotted blood. There is not blackening or tattooing around the margins of wounds. Margins of the wounds are irregular and ill defined.
3. Abrasion 2 x 1cm on lt. scapular region.

In the opinion of Medical Board the cause of death was coma as a result of injuries to skull and brain which were sufficient to cause death in the ordinary course of nature.

4. The injuries sustained by Guddi (Pw.8) vide injury report (Ex.P-11) are as under:-

1. Punctured wound (3in number) (¼ x ¼) size ¼ cm x ¼ centre black seen.
on post aspect of lower 1/3 Rt.leg.
2. Punctured wound (2in number) ¼ x ¼ Body palma aspect Rt. foot toward heal on middle both parallel to each other.
3. Punctured wound (3in number) ¼ x ¼ on medial aspect of Rt. foot.
4. Abrasion 4cm x 2cm on left lat. aspect back upto scapular region.
5. Abrasion 2cm x 2cm left side chest mid part.

5. Ghoodiya (Pw.2) also received injuries in the course of incident. The injury report (Ex.P-12) reads as under:-

1. lacerated wound 4cm x ½ cm x BD in left side fronto parietal region.
2. Incised wound 2¼ x ½ cm x BD on medial aspect of 1/3 left

forearm.
3. Abrasion 3cm x 1cm post upperly left forearm.
4. Abrasion 1cm x ½ cm Rt. side lower lip.
5. Rt. upper later incisor tooth break
6. Contusion swelling 8cm x 3cm left side back upto scapular region.
7. Abrasion 2cm x 2cm Rt. scapular region back.

6. Having considered the rival submissions and on scanning the material on record we find that the prosecution case is founded on the testimony of Ghoodiya (Pw.2), Guddi (Pw.8) and Kadi (Pw.9). Ghoodiya (Pw.2) in his examination in chief deposed that at 2 AM while he and his wife Kadi were sleeping in the `Pator' and his brothers Kannu and Kailash and niece Guddi were sleeping in Tiwari 8-10 assailants came to his house. One of the assailants flashed torch light on Kannu and opened fire at him that hit on his head. He (Ghoodiya) and Guddi were also given beating. Megh Singh and Rekh Raj were caught at the time of incident and others fled away in the jeep. He could not identify the assailants because of flash of torch light:

"अंधेरे में टार्च दी थी इसलिए मैं बदमाशों को नहीं पहचान पाया था।"

Ghoodiya further stated that he did not pay the amount of Jhagda to appellant Ratan:-

"हमारी जाति में जिन्दा आदमी की औरत दूसरी जगह बैठती है तो झगड़ा देने का रिवाज है जो पंचों द्वारा तय किया जाता है। झगड़े का अर्थ जेवर व हर्जा खर्चा पूर्व पति को नाता करने वाला पति देता है। मेरे द्वारा काडी उर्फ प्रेम के पूर्व पति रतन को झगड़ा नहीं दिया गया था।"

Guddi (Pw.8) also did not identify the assailants. She deposed thus:-

> "पुलिस बयान एक्जी.डी.6 का भाग ए से बी मारपीट व डर व रात के अंधेरे में उनको नहीं पहचान सकी, सही लिखाया था।"

7. Kadi (Pw.9) in her deposition admitted that she was married to Ratan but ill treated her. Her father therefore took her with him and she was given in Nata to Ghoodiya. She further stated that Raman opened fire at Kannu and Rekh Raj dragged her. Ratan was also present there. Megh Singh and Rekh Raj were caught at the time of incident and others fled away in a jeep. She admitted that Jhagda was not paid by Ghoodiya to Ratan:-

> "मैने नाता किया उसका झगड़ा नहीं चुकाया था। हमारी जाति में रिवाज है कि एक पति के रहते हुए यदि दूसरे पति से नाता करले तो पंचायत एक झगड़े की राशि तय कर देती है जो दूसरे पति द्वारा पहले पति को चुकाई जाती है।"

8. On analysing the testimony of prosecution witnesses from the point of view of trustworthiness we find it consistent qua appellants Megh Singh, Raman Singh, Ratan and Lekhra Raj @ Rekh Raj. It is established by the prosecution that Ratan wanted to forcibly lift his wife Kadi from the house of her second husband Ghoodiya, who was keeping her without following the customs necessary for Nata marriage. It is also proved that Raman Singh opened fire at the inhabitants sleeping in the house and Megh Singh and Rekh Raj were caught just after the incident. Participation of these accused in the crime has been established beyond reasonable doubt.

9. In the instant case the occurrence took place while legally wedded wife of appellant Ratan had resorted to adultery. Ratan made

attempt to take her back by approaching Caste Panchayat. A meeting of Panchayat was summoned at 2.30 PM on October 10, 1996 in the village. Bachhu Singh (Pw.4) in his deposition stated as under:-

> "पंच पटेल मौके पर आये थे, जो पंचायत के लिए आए थे, वह झगड़ा चुकाने की पंचायत के लिए 2-2.30 बजे दिन में आये थे।"

It appears that when meeting of Panchayat could not be held, Ratan became desperate to take back his wife forcibly and the incident occurred.

10. In re Murugian (AIR 1957 Madras 541) the husband was taking the wife to task for her improper intimacy with a third person, but the latter, instead of showing regard or at least keeping silent, replied that she would continue her intimacy with the third person, the court remarked:-

> "In a society where adultery is made punishable and where the lawfully wedded wife has not merely resorted to adultery but would also swear openly in the face of the husband that she would persist in such adultery and also abuse the husband for remonstrating against such conduct, we feel that we should take a more serious view of the psychological situation thus created to arrive at the conclusion whether it could not be a case of the husband losing his self control by reason of the provocation and whether such provocation was not grave and sudden enough to make him lose self control."

11. The test to see whether the accused acted under grave and sudden provocation is whether the provocation given was in the circumstances of the case likely to cause a normal and reasonable person to lose self control of himself to the extent of inflicting injuries he did inflict. In the case on hand we find that appellant Ratan along with Raman Singh,

Megh Singh, Rekh Raj and others had gone to the house where wife of Ratan was residing with Ghoodiya and leading adulterous life. In doing that act Raman Singh opened fire that resulted in death of Kannu. In these circumstances it can be held that offence committed by Ratan, Raman Singh, Megh Singh and Rekh Raj was culpable homicide not amounting to murder punishable under Section 304 Part I read with Section 149 IPC. They are also found guilty under section 460 IPC.

12. For these reasons, we dispose of instant appeals in the following terms:-

(i) We allow the appeal of appellants Hari Singh, Kirodi, Roop Singh (Appeal No.1066/2001) and Lakkhi (Appeal No.1061/2001) and acquit them of the charges under sections 148, 302/149, 307/149, 460, 324/149 and 323/149 IPC. The appellants Hari Singh, Kirodi, Roop Singh and Lakkhi are on bail, they need not surrender and their bail bonds stand discharged.

(ii) We partly allow the appeal of appellants Megh Singh, Raman Singh, Ratan and Rekh Raj @ Lekh Raj and instead of section 302 we convict them under section 304 part I read with 149 IPC and sentence each of them to suffer rigorous imprisonment for ten years and fine of Rs.10,000/- in default to further suffer six months rigorous imprisonment. Their conviction and sentence under section 460 IPC is maintained. We however acquit them of the charges under sections 148, 307/149, 324/149 and 323/149 IPC. The appellant Megh Singh is already in jail and the appellants Raman Singh, Ratan and Rekh Raj @ Lekh Raj, who are on bail, shall be taken into custody forthwith

and their bail bonds stand cancelled.

(iii) The impugned judgments of learned trial court stands modified as indicated above.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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